No. 2522.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

LO KWAI and MRS. LO KWAI, Sometimes Known as Ho Shee or Ho (Haw) Shee,

Appellants,

vs.

SAMUEL W. BACKUS, as Commissioner of Immigration, Port of San Francisco,

Appellee.

BRIEF FOR APPELLEE

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Filed this ..... day of July, 1915.

FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.

The Rincon Publishing Company

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FACTS.

The facts of this case together with a discussion of the evidence are set forth in the memorandum for the Acting Secretary (Trans. 173-183). The record further shows (Trans. 172) that this alien woman has been duly ordered deported upon the warrant of deportation for being an alien unlawfully in the United States (Trans. 172) with the provision, "that the alien Ho Shee, alias Haw Shee, alias Ho Shi, who

landed at the port of San Francisco, Cal., per SS. 'Siberia' on the 14th day of October, 1912, has been found in the United States in violation of the Act of Congress approved February 20, 1907, amended by the Act approved March 26, 1910, to-wit: "That the said alien is a prostitute and has been found practicing prostitution subsequent to her entry into the United States and may be deported in accordance therewith."

Counsel for the alien in his brief has urged various grounds upon which he claims the hearings before the Bureau of Immigration were unfair. On pages 2 and 3 of his brief he assigns as a point of error that the issuance of the warrant of arrest upon an anonymous communication was a violation of the immigration rules and regulations and beyond the prerogative of the Secretary of Labor. It is not intended on behalf of the respondent to justify the procedure of arresting an alien basing a warrant upon anonymous information, nor did the District Court (Trans. 138) sanction such procedure in rendering its decision and discharging the writ of *habeas corpus*. The following is quoted from the court's decision:

> "The record herein having been carefully considered, I am of the opinion that within the law as laid down in the adjudicated cases, the order of the Secretary of Labor directing the deportation of Ho Shee cannot be disturbed by the Court. By this, however, the Court does not desire to be understood as approving the issuance of a warrant of arrest upon 'anonymous information'. If we were dealing here only with the warrant of arrest I would have no hesitancy in ordering the woman's discharge. But the case has progressed

> far beyond the original warrant of arrest, and in the subsequent proceedings the officers seem to have kept within the somewhat elastic bounds, by which their actions are, under the law and the adjudications, freed from strict control."

The Secretary, however, in issuing the warrant, accompanied it with a letter (Trans. 19) in which he ordered that the warrant should not be executed unless an investigation developed facts justifying such action. That this direction of the Secretary was faithfully and carefully observed is at once apparent from the fact that the alien was not arrested under the warrant until October 17, 1913, when it appeared she was practicing prostitution in Sacramento from the statements of the following: James Weaver (Trans. 40 and 153), E. R. Malone (Trans. 157), Anna Phelps (Trans. 159) and Rose Ying (Trans. 163). Even if the alien had been arrested before sufficient evidence had been secured to justify the issuance of the warrant, she could nevertheless be deported if evidence secured in the subsequent proceedings showed that she was subject to expulsion under the law. The technical rules of pleading essential in criminal proceedings have no application in a summary, executive proceeding of this nature. It is deemed necessary to cite only a few of the many decisions by which this principle has been firmly established in immigration cases.

Ekiu vs. *U. S.,* 142 U. S. 65, 58 L. ed. 1146;
Ex parte Hamaguchi, 161 Fed. 185;
Ex rel Rosen vs. *Williams,* 200 Fed. 538;
U. S. vs. *Williams,* 175 Fed. 274;
Bauder vs. *Uhl et al.,* 211 Fed. 628;
Frick vs. *Lewis,* 233 U. S. 289, 58 L. ed. 967.

The statement on page 3 that the alien was not advised of her right of counsel until after preliminary hearing before the Bureau of Immigration cannot be cited as unfair since such procedure is entirely in accordance with Rule 22 4-b of the Immigration Rules and Regulations and the decision of the Supreme Court in the case of *Lo Wah Suey* vs. *Backus,* 225 U. S. 460, 32 Sup. Ct. 734, 56 L. ed. 1165.

That a hearing before the Bureau of Immigration upon a warrant of arrest of an alien may consist almost entirely of *ex parte* affidavits has been repeatedly determined by the courts to constitute a fair hearing even though no opportunity for a cross examination was afforded.

Ex parte Pouliot, 196 Fed. 437;
Ex parte Garcia, 205 Fed. 53;
In re Jem Yuen, 188 Fed. 350.

In the case of *Choy Gum* vs. *Backus,* No. 2475, this Court on May 10, 1915, filed an opinion by Judge Wolverton which most carefully reviewed all the recent authorities upon the question of fairness of an immigration hearing by *ex parte* affidavits and also on the point of the right of cross-examination in such proceedings and this decision emphatically determined these points in favor of the respondent.

Respectfully submitted,

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Assistant United States Attorney.

Dated July 15, 1915.